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on May 13, 2010

PATENT
Docket No.: 020375-006500US

TOWNSEND and TOWNSEND and CREW LLP

By: /Rebecca Walker/_____

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Jeffrey G. Nowlin et al.

Patent No.: 7,610,248

Issued: October 27, 2009

Application No.: 10/028,888

Filed: December 19, 2001

For: WEIGHT MEASURING SYSTEMS
AND METHODS

Customer No.: 20350

Confirmation No.: 2318

Examiner: Akiba K. Robinson Boyce

Art Unit: 3628

REQUEST FOR
RECONSIDERATION OF PATENT
TERM ADJUSTMENT
DETERMINATION UNDER 37
C.F.R. § 1.705(d)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

Pursuant to 37 C.F.R. § 1.705(d), Applicants respectfully request reconsideration of the patent term adjustment determination. This request is accompanied by the fee set forth in § 1.18(e) and a statement of facts as required under 37 C.F.R. § 1.705(b)(2).

In view of the following, it is respectfully requested that Applicants be granted a corrected patent term adjustment of 1951 days.

Statement of Facts as Required under 37 C.F.R. § 1.705(b)(2)

The correct patent term adjustment is 1951 days and not 1623 days as stated on the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed on April 21, 2010 on the DECISION ON REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION.

The period of adjustment under § 1.702(a) is 1620 days ("A delay").

The period of adjustment under § 1.702(b) is 1773 days ("B delay").

The period of adjustment under § 1.704(a) is 101 days ("applicant delay").

The period of adjustment under § 1.703(f) is 1442 days.

The Relevant Dates as Specified in 37 C.F.R. §§ 1.703(a)-(e), § 1.704 and the Adjustment Specified in 37 C.F.R. § 1.703(f)

1. § 1.703(a)

Applicants are in agreement with the Patent Office's determination of a period of adjustment of 7 days under 37 C.F.R. § 1.703(a).

2. § 1.703(b)

The Patent Office failed to issue a patent within three years of the actual filing date of the above-referenced application. The period of adjustment under 37 C.F.R. § 1.702(b) begins on the day after the date that is three years from the filing date of the instant application, December 20, 2004, and ends on October 27, 2009, the date the patent was issued. Thus, the effective period of adjustment under 37 C.F.R. § 1.702(b) is 1773 days as shown in the table below.

Filing Date	3-Year Date	Date Patent Issued	Days Over 3 Years Through Patent Issuance
December 19, 2001	December 19, 2004	October 27, 2009	1773 days

3. § 1.703(c)-(e)

There are no relevant dates as specified under §§ 1.703(c)-(e).

4. **Overlapping periods under § 1.703(a)-(e)**

Applicants have calculated overlapping periods in accordance with *Wyeth v. Dudas* (88 U.S.P.Q.2d 1538 D.D.C. 2008). Periods of delay under 35 U.S.C. §154(b)(1)(A) and 35 U.S.C. §154(b)(1)(B) overlap only if they occur on the same calendar day or days (*see Wyeth*). There are 1442 days of overlap under § 1.703(a)-(e).

5. **Reduction of Period of Adjustment of Patent Term under 37 C.F.R. § 1.704**

Applicants dispute the calculation by the Patent Office of the period of adjustment under § 1.704(a) as a total of 98 days as indicated by the attached Patent Term Adjustment History (*see Exhibit A*). The correct period of adjustment under § 1.704(a) is 101 days.

6. **§ 1.703(f)**

The period of adjustment under 37 C.F.R. § 1.703(f) is as follows:

Type "A delay:"	1620 days
Type "B delay:"	1773 days
"A" and "B" overlap:	1442 days
Applicant delay:	101 days
<u>Adjusted:</u>	<u>1951 days</u>

Terminal Disclaimer

The instant applicant is not subject to a terminal disclaimer at this point in time.

Statement under 37 C.F.R. § 1.705(d)

The instant patent issued on October 27, 2009, and Applicants submit that this request for reconsideration of patent term adjustment is being filed within the one-month time frame set forth on the DECISION ON REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION.

Patent Term Adjustment Determination

Pursuant to *Wyeth*, Applicants are entitled to 1951 days of patent term adjustment, *i.e.*:

[1620 + 1773 days (A delay + B delay)] minus [1442 days (overlap days)].

Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

Please charge the fee set forth in 37 C.F.R. § 1.18(e) (\$200.00) to Deposit Account No. 20-1430. Please charge any necessary additional fees or credit any overpayments to the above-noted Deposit Account.

Respectfully submitted,

/Stephen F. Jewett /
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Dated May 13, 2010

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10/028,888 WEIGHT MEASURING SYSTEMS AND METHODS

05-12-
2010::17:24:59**Patent Term Adjustments**

Patent Term Adjustment (PTA) for Application Number: 10/028,888

Filing or 371(c) Date:	12-19-2001	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	10-27-2009	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	1623
USPTO Adjustment(days):	-	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
04-17-2010	Petition Decision - Granted		
03-02-2010	Petition Entered		
10-27-2009	Recordation of Patent Grant Mailed		
10-07-2009	Issue Notification Mailed		
10-27-2009	PTA 36 Months		
10-27-2009	Patent Issue Date Used in PTA Calculation		
09-23-2009	Dispatch to FDC		
09-23-2009	Application Is Considered Ready for Issue		
09-23-2009	TC Return to Pubs		
09-15-2009	Issue Fee Payment Verified		
09-15-2009	Issue Fee Payment Received		
07-23-2009	Miscellaneous Incoming Letter		97
07-01-2009	Pubs Case Remand to TC		⬆
06-15-2009	Mail Notice of Allowance		⬆
06-12-2009	Document Verification		⬆
06-12-2009	Notice of Allowance Data Verification Completed		⬆
05-12-2009	Case Docketed to Examiner in GAU		⬆
03-10-2009	Mail BPAI Decision on Appeal - Reversed	1714	
03-10-2009	BPAI Decision - Examiner Reversed	⬆	
04-11-2008	Docketing Notice Mailed to Appellant	⬆	
04-11-2008	Assignment of Appeal Number	⬆	
03-19-2008	Appeal Awaiting BPAI Docketing	⬆	
11-21-2007	Mail Reply Brief Noted by Examiner	⬆	
11-20-2007	Reply Brief Noted by Examiner	⬆	
11-16-2007	Date Forwarded to Examiner	⬆	
11-09-2007	Reply Brief Filed	⬆	
10-04-2007	Exam. Ans. Review Complete	⬆	
09-13-2007	Mail Supplemental Examiner's Answer	⬆	
09-10-2007	2nd or Subsequent Examiner's Answer to Appeal Brief	⬆	
07-10-2007	Order Returning Undocketed Appeal to the Examiner	⬆	
10-05-2006	Case Docketed to Examiner in GAU	⬆	

09-21-2005	Case Docketed to Examiner in GAU	🔒
04-29-2005	Case Docketed to Examiner in GAU	🔒
02-01-2005	Appeal Awaiting BPAI Docketing	🔒
01-31-2005	Mail Reply Brief Noted by Examiner	🔒
01-27-2005	Reply Brief Noted by Examiner	🔒
12-14-2004	Date Forwarded to Examiner	🔒
11-22-2004	Reply Brief Filed	🔒
10-21-2004	Examiner's Answer to Appeal Brief	🔒
08-02-2004	IFW TSS Processing by Tech Center Complete	🔒
07-01-2004	Miscellaneous Incoming Letter	🔒
08-02-2004	Date Forwarded to Examiner	🔒
07-01-2004	Appeal Brief Filed	🔒
07-01-2004	Notice of Appeal Filed	🔒
08-02-2004	Date Forwarded to Examiner	
07-01-2004	Response after Non-Final Action	
05-03-2004	Non-Final Rejection	
02-19-2004	Date Forwarded to Examiner	
01-12-2004	Appeal Brief Filed	
11-12-2003	Notice of Appeal Filed	
11-04-2003	Mail Advisory Action (PTOL - 303)	
10-31-2003	Advisory Action (PTOL-303)	
10-09-2003	Date Forwarded to Examiner	
09-29-2003	Amendment after Final Rejection	
08-12-2003	Mail Final Rejection (PTOL - 326)	
08-11-2003	Final Rejection	
05-27-2003	Incoming Letter Pertaining to the Drawings	
06-05-2003	Date Forwarded to Examiner	
05-27-2003	Response after Non-Final Action	
02-26-2003	Mail Non-Final Rejection	7
02-24-2003	Non-Final Rejection	🔒
02-12-2003	Case Docketed to Examiner in GAU	🔒
04-22-2002	Information Disclosure Statement (IDS) Filed	🔒
04-22-2002	Information Disclosure Statement (IDS) Filed	🔒
04-22-2002	Information Disclosure Statement (IDS) Filed	🔒
05-16-2002	Case Docketed to Examiner in GAU	🔒
05-07-2002	Application Dispatched from OIPE	🔒
05-06-2002	Application Is Now Complete	🔒
04-01-2002	Additional Application Filing Fees	🔒
04-01-2002	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	🔒
01-24-2002	Notice Mailed--Application Incomplete--Filing Date Assigned	🔒

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01-10-2002	IFW Scan & PACR Auto Security Review
12-19-2001	Initial Exam Team nn



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PTA Re-check
020375-006500US
First Data Corporation
Calculated on 05/13/2010

***Deadlines are in Bold**
****Missed dates in Bold/Italic**

Application Filed	12/19/01	3-year mark 12/19/04
14-mos. mark	02/19/03	
Ntc./Missing Parts	01/24/02	3-mos. mark 04/24/02
Response	04/01/02	
IDS	04/22/02	
1 st OA	02/26/03	3-mos. mark 05/26/03
	02/20/03 to 02/26/03 = +7 days	
Response	05/27/03	
	05/26/03 to 05/27/03 = -1 day	
Final OA	08/12/03	3-mos. mark 11/12/03
Response	09/29/03	
Advisory Action	11/04/03	Deadline still 11/12/03
Ntc. Of Appeal	11/12/03	
Appeal Brief	01/12/04	
Non-Final OA	05/04/04	3-mos. mark 08/04/04
Response w/Suppl. Brf.	06/30/04	
Examiner's Answer	10/26/04	2-mos. mark 12/26/04
Reply Brief	11/22/04	
2 nd Exam. Answer	09/13/07	
Suppl. Reply	11/09/07	
Reply Brf. Fwd.	11/21/07	
Docketing Ntc.	04/11/08	
Appeal Decision	03/10/09	
	07/01/04 to 03/10/09 = +1714	
Ntc. Of Allowance	06/15/09	
Suppl. ADS	07/23/09	
Resub. For Publ.	09/23/09	
	06/16/09 to 09/23/09 = -100 days	
Issue Date	10/27/09	

PTA = A Time + B Time – Overlap

A Time = $7 - 1 + 1714 - 100 = 1620$ days

(There were three delays on USPTO side
and two on applicant's.)

B Time = 12/20/04 to 10/27/09 = 1773 days

Overlap = 12/20/04 to 03/10/09 - 06/16/09 to 09/23/09 = 1442 days

Total PTA = $1620 + 1773 - 1442 = 1951$ days.

***This is 328 more than the USPTO calculation total. This is most likely because the USPTO did not issue any "B" Time at all. They also under-charged us by three days for the delay caused by the Supplemental ADS after the Notice of Allowance, calculated, as closely as we can figure from the mailing of the Notice of Allowance to the day it was resubmitted for publication.**